



# *LEX KOREA*

Ewha Law School English Law Journal

2026 Autumn

Vol.31

Kyungmin Lim

Assessing Landowner Protections in Multi-District Urban Developments under Korean Law through the Lens of the French Constitutional Council ..... 1

Hyein Ra

Introducing “K-Discovery” under the Revised Act on the Promotion of Mutually Beneficial Cooperation between Large Enterprises and Small and Medium Enterprises ..... 11

Seoha Jung

The Family-Member Exemption for Evidence Tampering under Korean Criminal Law ..... 23



EWHA WOMANS UNIVERSITY  
LAW SCHOOL





# *LEX KOREA*

Ewha Law School English Law Journal

2026 Autumn

Vol.31

LEX KOREA

Ewha Law School English Law Journal



EWHA WOMANS UNIVERSITY  
LAW SCHOOL



# LEX KOREA

Ewha Law School English Law Journal

---

Vol.31 (Autumn 2026)

Published by Ewha Legal Science Institute

e-mail: law@ewha.ac.kr

<https://lawschool.ewha.ac.kr>

ABOUT *LEX KOREA*

## **Lex Korea is led by Ewha Legal Science Institute**

Our mission is to become the most effective and conclusive guide to Korean law on the Internet. Under the purpose of providing easy access to Korean law materials, our members strive to meet the increasing demand for Korean legal information.

Lex Korea has gathered comprehensive Korean legal information in English and created substantive sources for international lawyers. We provide information that may be helpful for your research on Korean legal issues.

### MEMBERS(Autumn 2026)

|           |               |
|-----------|---------------|
| PRESIDENT | IHyeon Kim    |
|           | SoYoung Lee   |
|           | Seah Kim      |
|           | Youngseon Cho |
| EDITOR    | Seah Kim      |
|           | Seoha Jung    |
|           | Hyein Ra      |
|           | Jiyeon Park   |
|           | Yooreem Chang |



# LEX KOREA

Ewha Law School English Law Journal

---

Vol.31 (Autumn 2026)

## CONTENTS

Kyungmin Lim

Assessing Landowner Protections in Multi-District Urban Developments under Korean Law through the Lens of the French Constitutional Council ..... 1

Hyein Ra

Introducing “K-Discovery” under the Revised Act on the Promotion of Mutually Beneficial Cooperation between Large Enterprises and Small and Medium Enterprises ..... 11

Seoha Jung

The Family-Member Exemption for Evidence Tampering under Korean Criminal Law ..... 23



## **Assessing Landowner Protections in Multi-District Urban Developments under Korean Law through the Lens of the French Constitutional Council**

Kyungmin Lim\*

### **Abstract**

As modern urban planning moves away from contiguous, single-site developments toward fragmented, multi-district smart cities and transit-oriented hubs, land expropriation frameworks face a critical challenge: ensuring that broad administrative project boundaries do not artificially under-evaluate landowner compensation. South Korea guarantees “just compensation” under Article 23(3) of the Constitution, enforcing this through Articles 70 (1) and 70 (2) of the Land Compensation Act. However, public developers increasingly rely on macro-zone planning designations that risk diluting individual parcel readiness against broader district deficiencies. This paper analyzes whether South Korea’s existing statutory and judicial safeguards adequately protect property owners in fragmented development sectors. It conducts a comparative analysis of the French Constitutional Council’s landmark ruling, Decision n° 2026-1206 QPC, which established a binding interpretation reserve enforcing a localized “common network capacity” test for multi-site development sectors. This paper argues that while South Korea achieves similar outcomes via administrative case law, integrating the French explicit localized infrastructure test could provide a constitutional defense against administrative manipulation in multi-district project designations.

---

\* Ewha Law School. e-mail: dlarudals0326@gmail.com

**Keywords** *land expropriation, urban development, Land Compensation Act, property rights, French expropriation code*

---

## I. Introduction

The constitutional mandate of “just compensation” during public land acquisition stands as a cornerstone of property rights in democratic legal traditions. In South Korea, this guarantee is explicitly stated in Article 23(3) of the Constitution of the Republic of Korea. However, executing this constitutional mandate becomes complicated as public authorities expand the scale of urban planning.

Traditionally, land expropriation involved contiguous, well-defined geographic zones, notably single-site housing projects or highway corridors. Modern public development, however, relies heavily on fragmented, multi-district development designations.<sup>1</sup> Expropriating authorities routinely designate non-contiguous parcels—spanning multiple neighborhoods or transit nodes—under a single, overarching administrative master plan.<sup>2</sup>

While fragmented development optimizes municipal infrastructure and transit-oriented growth, it introduces a legal vulnerability: the risk that the value of certain plots of expropriated land in multi-site zones will be undervalued when being assessed for compensation. When a public developer aggregates geographically distant sites into one zone designated for the same public project, administrative evaluators may judge highly developed plots of land as having similar value as other, infrastructurally deficient, plots located in the same development zone.

This paper examines whether South Korea’s statutory framework under the Act on Acquisition of and Compensation for Land for Public Works Projects (hereinafter the Land Compensation Act) sufficiently shields landowners from this valuation trap. It evaluates this question by drawing a comparative analysis with French expropriation law, specifically examining Decision n° 2026-1206

QPC of the French Constitutional Council, which directly addressed multi-site development zones.

## **II. Expropriation Laws in South Korea<sup>3,4</sup>**

### **1. Constitutional Property Rights**

Article 23(3) of the Korean Constitution dictates that “*Expropriation, use or restriction of private property from public necessity and compensation therefor shall be governed by Act: Provided, that in such a case, just compensation shall be paid.*”

The Korean Constitutional Court has consistently interpreted “just compensation” as requiring complete compensation for the objective value of the expropriated property, without limits as to the amount, timing and method of compensation.<sup>5</sup> Objective value means the market value of the property immediately prior to expropriation, before the market prices reflect the impact of the public project that makes the expropriation necessary.<sup>6</sup>

### **2. The Land Compensation Act**

Land expropriation in Korea must be comply with the Land Compensation Act. Article 70 of the Land Compensation Act operationalizes the concept of ‘just compensation’ demanded by Article 23 of the Constitution. Under this provision, ‘just’ compensation aims to prevent the property owner from incurring a loss due to the public project, while equally ensuring they do not derive an unjust benefit from it.<sup>7</sup>

The latter is achieved through the Exclusion of Development Gains Principle under Article 70(1). This provision bases compensation for expropriated land upon the publicly announced land prices under the Act on the Public Announcement of Real Estate Values. The Act on the Public Announcement of Real Estate Values

serves as the legal foundation that mandates, regulates, and standardizes the official assessment and publication of publicly announced land prices in South Korea to ensure transparency and fairness in real estate taxation and public administration. Under this act, standard factors that influence property valuation—such as location, size, and actual land use—are fully adjusted to determine the price. However, any price increases specifically resulting from the announcement or execution of the relevant public works project are classified as development gains and are strictly excluded from this adjustment. This is known as the Exclusion of Development Gains Principle. Essentially, although property prices often rise following the announcement of a public project, compensation awarded to landowners cannot include this rise. The Constitutional Court has grounded this exclusion on principles of equity, reasoning that development gains are not inherently attributable to the landowner. Because such gains are solely due to the execution of the public project, they cannot be considered part of the property's objective value at the time of expropriation.<sup>8</sup>

The objective value that determines compensation is, in turn, governed by the the Actual Status Evaluation Principle set out in Article 70.2 Under this principle, land must be appraised based on its actual, objective usage and physical status at the time of valuation, disregarding temporary utilization as well as any subjective or speculative value.

### **3. Structural Vulnerability in Multi-District Development**

Despite these principles, multi-district development projects create potential complications in land expropriation compensation. In practice, Korean land appraisal relies heavily on the selection of 'standard comparison parcels.' The standard comparison parcel is a parcel of land located in a nearby area that is similar to the expropriated property in terms of zoning, actual use, and surrounding environment. This is used as a metric to determine land value and calculate the amount of compensation.

When public developers implement a multi-district project, appraisers risk selecting standard comparison parcels that reflect the undeveloped infrastructure profile of another sub-sector located in the same development sector. Consequently, a landowner whose property sits in a sub-sector that is comparatively better developed risks having their land's utility advantage diluted by remote, undeveloped sectors. This may conflict with Supreme Court rulings that the natural and social conditions of standard comparison parcels chosen should be identical or most similar to those of the subject property to be expropriated,<sup>9</sup> and that infrastructure value independent of the public project that caused the expropriation should be preserved.<sup>10</sup>

### **III. The View of the French Constitutional Court: Decision n° 2026-1206 QPC**

#### **1. Statutory Background**

Under French law, expropriation compensation is bound by Article 17 of the 1789 Declaration of the Rights of Man and of the Citizen, which forbids property being taken from an individual without just and prior indemnity.

Under Article L. 322-3 (2°) of the French Expropriation Code, land is classified as buildable land only if it is effectively serviced by immediate access roads, drinking water, electricity, and sanitation networks. However, the second sentence of Article L. 322-3 (2°) allows an exception for lands located within an Integrated Development Zone (*Zone d'Aménagement Concerté*, hereinafter 'ZAC'), the dimension and capacity of utility networks are to be evaluated at the scale of the development sector as a whole.

#### **2. The Dispute**

In Decision n° 2026-1206 QPC (priority issue of constitutionality, in French Question Prioritaire de Constitutionnalité), ruled by the French Constitutional Council on June 19, 2026, private landowners in a multi-site ZAC challenged Article L. 322-3 (2°) of the French Expropriation Code, claiming that its application on their land violated their rights to property. Their land had high market value as buildable land, being located in a highly developed sub-sector and directly serviced by infrastructure networks. However, because the public developer had designated their land as part of a multi-site ZAC that included geographically separate, undeveloped sectors, the expropriating authority judged the network capacity across the entire development zone. Since other sectors of the zone were not themselves serviced by infrastructure comparable to that of the applicants' property, the authority declared the utility dimensions "insufficient," stripping the applicants' land of its buildable land status and accordingly paying the landowners a smaller sum of money as compensation. The applicants claimed that they were denied fair compensation in violation of the requirements of Article 17 of the Declaration of the Rights of Man and of the Citizen of 1789.

### **3. The Decision**

The Constitutional Council declared Article L. 322-3 (2°) of the French Expropriation Code constitutional under a binding interpretation reserve.

The purpose of the rule is consistent with general public interest, as it prevents public authorities from being compromised in their land acquisitions by an unjustified inflation of prices. The exception of the second sentence is applied only under limited and justifiable circumstances in service of the purpose of the code. The exception is applicable only to parcels located within a zone designated by an urban planning document as being subject to a comprehensive development operation. Also, by establishing certain conditions that reflect whether the land can be used for building purposes, the rule retains an appropriate criterion for the purpose of evaluating the loss suffered by the expropriated party. On the basis

of these considerations, Article L. 322-3 (2°) on the whole must be considered compliant with the French Constitution.

However, in the case of property located within a multi-site ZAC, the dimensions of the utility networks serving different sub-sectors are assessed with regard to the entirety of the development zone. In so doing, the contested provisions are liable to be applied uniformly to plots of land located on geographically distant sites, whose infrastructure conditions may vary greatly. Consequently, for the contested provisions to properly observe the right to property guaranteed by the Constitution, they must be interpreted as requiring the expropriating authority to evaluate the dimensions of the networks serving a multi-site ZAC with regard to the zone as a whole only in cases where different sites within its perimeter are intended to be served by the same networks or depend on shared infrastructure. Otherwise, the dimensions of the networks must be assessed with regard to each individual site or, where applicable, each group of sites intended to be served by the same networks or depending on shared infrastructure.

## **IV. Implications for the Korean Expropriation Regime**

### **1. Differences in Method between Korean and French Jurisdictions**

Both the Korean and French jurisdictions recognize that the methods expropriating authorities use to assess property value and calculate compensation may have limits in the case of multi-site development sectors. The judicial mechanics by which the issue is addressed in the two countries differ. South Korea establishes broad principles in the Land Compensation Act and relies on post-hoc judicial corrections by administrative courts reviewing appraiser selections under statutory law. France, through recent Constitutional Council decisions, is in the process of establishing an explicit, constitutional rule of interpretation that binds administrative authorities before valuations are finalized.

## **2. The Limits of the Korean Framework**

Korea's reliance on the selection of standard land parcels can potentially leave landowners vulnerable to undervaluation. In the process of defining a broad development zone, appraisers have on several occasions treated the entire designation,<sup>11</sup> or large parts of the designation including plots of land with varying characteristics,<sup>12</sup> as a single cohesive unit. Korean statutory law currently contains no explicit legislative requirement forcing appraisers to verify whether non-contiguous project sectors share functional infrastructure before applying uniform metrics across a development sector. Under these circumstances, there is cause for concern that multi-site development projects may amplify the vulnerabilities already present in the current expropriation regime.

## **3. Legislative and Judicial Implications<sup>13</sup>**

To ensure that the protection of property rights take modern urban development realities into account, South Korea can consider two potential solutions.

Firstly, a localized infrastructure test could be codified in the Land Compensation Act. Specifically, an amendment to Article 70 of the Land Compensation Act could state that when evaluating land within multi-district or non-contiguous public development sectors, the level of existing infrastructure development (including roads, water, electricity) must be appraised strictly at the level of the localized geographic sector, unless the developer proves that the sectors share a common infrastructure network.

Secondly, the Central Land Tribunal's Appraisal Guidelines should be updated to reflect the aforementioned concern. Similar to the French criterion of common capacity, restrictions against the selection of standard comparison parcels from distant project sub-sectors could be put into place, with exceptions allowed for cases where sub-sectors are directly serviced by the same functional utility networks with the expropriated parcel.

## V. Conclusion

As public developers in South Korea increasingly deploy fragmented, multi-district urban plans to develop provinces outside of over-populated Seoul, it is appropriate for the legal mechanisms for land valuation to evolve accordingly. While South Korea's existing jurisprudence under Article 23(3) of the Constitution provides a foundation, the expropriation regime remains susceptible to administrative overreach in complex multi-site projects.

The French Constitutional Council's Decision n° 2026-1206 QPC can provide a comparative model. By establishing that uniform appraisal of infrastructure networks across public development sectors is only constitutional in cases where sites share an actual "common capacity," France provides elevated judicial protection for property owners. By adopting a similar localized functional test—both legislatively in the Land Compensation Act and judicially in administrative review—South Korea can ensure that its constitutional mandate of "just compensation" is properly upheld, even in the face of increasingly large-scale and sophisticated public projects.

- 
- 1 Mok Donghoon, *Considering the refinement of the combined development framework*, Kyoungin Daily (August 2, 2026), (trans. by writer).
  - 2 Kim Joojin, Song Younghyun, Kim Okyeon, *A Case Study on the CRPs and Political Implications*, Korea Spatial Planning Review, Vol. 73, 286, 291 (June 2012).
  - 3 See generally, Park Kyunsung, *Select Issues in the Loss Compensation System*, Legal Studies (January 2009), (trans. by writer).
  - 4 See generally, Kim Sungwook, *Land Expropriation and Protection of Property Rights*, Land Law Review, Vol. 37 No. 1, 99-117 (June 2021).
  - 5 Constitutional Court, Oct. 27, 1990, 89Hun-Ma107, S. Korea
  - 6 Constitutional Court, Oct. 27, 1990, 89Hun-Ma107, S. Korea

- 7 Lee Jungah, *Exclusion of Development Gains in Land Compensation*, Korea Housing and Economy (August 1, 2026), (trans. by writer).
- 8 Constitutional Court, Dec. 29, 2009, 2009Hun-Ba142, S. Korea
- 9 Supreme Court Decision, 95Nu14350, Ruled May 14<sup>th</sup> 1996
- 10 Supreme Court Decision, 95Nu14350, Ruled May 14<sup>th</sup> 1996
- 11 Supreme Court Decision 99Du5542, Ruled Jun. 9<sup>th</sup> 2000
- 12 Supreme Court Decision 2009Du4340, Ruled Sep. 8<sup>th</sup> 2011
- 13 See generally, Sung Joongtak, *An Analysis of Compensation Issues in Land Expropriation and Proposals for Alternatives*, Kapa Focus 3 (Dec. 2016), (trans. by writer).

## References

- Kim Joojin, Song Younghyun, Kim Okyeon, *A Case Study on the CRPs and Political Implications*, Korea Spatial Planning Review, Vol. 73 (June 2012).
- Kim Sungwook, *Land Expropriation and Protection of Property Rights*, Land Law Review, Vol. 37 No. 1 (June 2021).
- Lee Jungah, *Exclusion of Development Gains in Land Compensation*, Korea Housing and Economy (August 1, 2026), (trans. by writer).
- Mok Donghoon, *Considering the refinement of the combined development framework*, Kyoungin Daily (August 2, 2026), (trans. by writer).
- Park Kyunsung, *Select Issues in the Loss Compensation System*, Legal Studies (January 2009), (trans. by writer).
- Sung Joongtak, *An Analysis of Compensation Issues in Land Expropriation and Proposals for Alternatives*, Kapa Focus 3 (Dec. 2016), (trans. by writer).

## **Introducing “K-Discovery” under the Revised Act on the Promotion of Mutually Beneficial Cooperation between Large Enterprises and Small and Medium Enterprises**

Hyein Ra\*

### **Abstract**

On January 29, 2026, the National Assembly of the Republic of Korea passed an amendment to the Act on the Promotion of Mutually Beneficial Cooperation between Large Enterprises and Small and Medium Enterprises. This revision introduced what Korean legal commentary has termed “K-Discovery,” since it is the first time in the nation’s legal history that a discovery mechanism has been codified in civil procedure. This article situates the amendment within a longstanding scholarly debate over evidentiary asymmetry in Korean civil litigation and the observable pattern by which Korean claimants have pursued foreign discovery against Korean-affiliated enterprises. It then examines the three procedural mechanisms introduced by the amendment, namely the expert fact-finding investigation, the data preservation order, and the counsel-led party examination, together with the interface between the amendment and the newly codified attorney-client privilege. The article concludes with an analysis of the amendment’s likely consequences, arguing that its central effect is not the investigative power it creates but the redistribution of bargaining power that follows from the sanction attached to non-cooperation. It further considers that this same feature generates the principal risk of strategic or opportunistic invocation that will determine

---

\* Ewha Law School. e-mail: hira20@ewha.ac.kr

whether the mechanism is extended to Korea's wider body of technology protection legislation.

**Keywords** *discovery process, technology misappropriation, Cooperation Act, evidentiary asymmetry, attorney-client privilege*

---

## I. Introduction

On January 29, 2026, the National Assembly of the Republic of Korea enacted an amendment to the *Act on the Promotion of Mutually Beneficial Cooperation between Large Enterprises and Small and Medium Enterprises* (hereinafter, the "Cooperation Act" or "the Act").<sup>1</sup> The amendment has been widely characterized in Korean legal commentary as the first codification of a discovery function in domestic law, and it has accordingly acquired the label "K-Discovery."

The formal scope of the amendment is narrow. Its new provisions apply only to actions for damages arising from the misappropriation of technology in transactions between principal enterprises and their small and medium-sized subcontractors. Its doctrinal significance, however, is considerably broader. For the first time, Korean civil procedure authorizes a court to permit a party-nominated expert to enter premises controlled by an opposing party, to question that party and its employees, and to inspect, copy, and test materials and equipment held there. The amendment also introduces a pre-action data preservation order backed by criminal sanction, and a counsel-led examination procedure that can be strategically scheduled before the first pleading date. Each of these mechanisms addresses a specific and long-documented deficiency in the Korean law of evidence. This article proceeds by first tracing the institutional failures that motivated the reform, then examines the substance of the three new procedures introduced by the amendment, and finally closes with an analysis of the amendment's likely consequences for corporate practice.

## **II. Background: Problems with Evidence Gathering under Contemporary Korean Civil Procedure**

In common law jurisdictions, and paradigmatically in the United States, discovery denotes a pre-trial process in which the parties themselves compel the production of documents, the taking of depositions, and the answering of written interrogatories. The procedure is party-driven and expansive in scope, such that a litigant may ordinarily obtain material relevant to any claim or defense, including material whose existence the requesting party has not independently established.

Korean civil procedure rests on a different premise. Evidence taking is conceived as a judicial function, and the Korean Civil Procedure Act regulates the court’s examination of evidence in detail while leaving the parties’ own collection of evidence almost entirely unregulated. Korean scholarship has identified this asymmetry as the structural root of the problem. The absence of a regulatory framework for party-led evidence collection is difficult to justify, given the frequency with which evidence is concentrated in the hands of a single litigant in modern litigation, including environmental disputes, medical malpractice cases, product liability, and technology misappropriation.<sup>2</sup>

Korean law has long offered instruments that allow litigants to seek evidence under the Civil Procedure Act. Under Article 347, the court may order the submission of documentary evidence when such request is deemed justifiable. However, it has been observed that litigants face considerable practical difficulty, since the requesting party must specify the document, identify its holder, and state the fact it would prove, which are requirements that are difficult to satisfy precisely because the applicant does not hold the document.<sup>3</sup> Furthermore, sanctions for non-compliance remain excessively lenient, meaning parties may strategically choose the risk of penalty over the submission of core evidence. Consequently, in modern litigation—where documentary evidence is inevitably concentrated in the hands of corporations or specialists—plaintiffs often opt for criminal or administrative procedures instead, a phenomenon that attests to the ineffectiveness

of the civil procedure itself.<sup>4</sup>

These deficiencies have produced an observable pattern of forum selection in which Korean claimants pursue actions against Korean-affiliated enterprises before foreign courts in order to obtain access to foreign discovery. The litigation involving Coupang's large-scale personal data breach provides a recent illustration. Following the breach, claimants filed proceedings not only in Korea but also against the group's United States parent—a Delaware holding company listed on the New York Stock Exchange— in United States federal court. Counsel for the claimants indicated that United States discovery would be deployed to compel production of the parent company's board minutes and records of its security investment decisions. These materials, which are substantially more difficult to obtain through a Korean document production order, are intended to establish that governance failures at the parent level were responsible for the breach.<sup>5</sup> The recourse to foreign discovery as illustrated in the Coupang case has raised awareness for a need to codify discovery mechanisms that align with domestic legal instruments, and hence the Cooperation Act signifies the beginning of a series of procedural reforms aimed at enacting discovery into Korean civil practice.

A second and more immediate driver of the reform lies closer to home. The Korean industrial sector increasingly relies on a horizontal network of small and medium-sized suppliers to provide materials, components, and equipment into the technology-intensive products of large manufacturers. This dependence has been accompanied by a persistent pattern of conduct in which principal contractors exploit their superior bargaining position to demand technical data from subcontractors and subsequently misappropriate or divert that data.

The Ministry of SMEs and Startups estimates that Korean small and medium-sized enterprises sustain approximately four hundred such incidents annually, with aggregate losses of roughly five hundred forty billion won and an average of approximately one point eight billion won per incident. Affected enterprises consistently identify difficulty in collecting evidence as the single greatest obstacle to recovery.<sup>6</sup> Against this backdrop, the amendment to the

Cooperation Act passed the plenary session of the National Assembly on January 29, 2026, alongside a companion amendment to the Attorney-at-Law Act codifying attorney-client privilege in Korean law for the first time.

The new provisions of the Cooperation Act take effect two years after promulgation, on February 20, 2028. The extended *vacatio legis* reflects the fact that the amendment constitutes the first installment of a coordinated legislative program rather than a discrete reform. Comparable mechanisms have been proposed for the Patent Act, the Utility Model Act, the Unfair Competition Prevention and Trade Secret Protection Act, the Subcontracting Act, and ultimately the Civil Procedure Act, with the objective of establishing a uniform evidentiary framework across Korea’s technology protection statutes.

### **III. The Core Mechanisms under the Revised Act**

The amendment is commonly described as introducing three new procedures, each targeted at a different weak point in the prior system.

#### **1. Expert Fact-Finding Investigation (Article 40.6)**

Article 40.6.1 provides that, where necessary to prove the existence of a violation or to calculate the resulting damages, the court may, upon the petition of one party, designate an expert in the relevant technical field and authorize the designated experts to enter premises managed by the opposing party. Within those premises the designated expert may question the opposing party and its employees, inspect and copy materials, and operate, measure, or test equipment as the investigation requires.

Three conditions govern the exercise of this power. First, there must be a substantial likelihood that the opposing party has engaged in the misappropriation of technology data. Second, the burden imposed on the opposing party must not

be excessive. Third, it must be difficult to expect the petitioning party to collect the evidence by other means.

To guarantee the efficacy of expert investigations, the Act provides for significant adverse consequences in cases of non-cooperation. Under Article 40.6.11, where the opposing party without justifiable reason fails to provide materials requested by the designated expert and thereby refuses, obstructs, or evades the investigation, the court may deem the petitioning party's assertions as to the facts sought to be proved to be true. Unjustified refusal, obstruction, or evasion may additionally attract an administrative fine of up to one hundred million won in the case of a corporation and up to fifty million won in the case of officers, employees, and other interested persons.

## **2. Data Preservation Order (Article 40.11)**

The expert investigation procedure presupposes that the relevant evidence remains available at the time of the investigation. Article 40.11 accordingly provides for a data preservation order. Where an action for damages has been commenced, or where its commencement is reasonably anticipated, the court may order that data necessary to prove a violation or to calculate damages be preserved against destruction for a period not exceeding one year.

Two conditions apply. First, facts sufficient to identify the data to be made subject to the order must be established. Second, it must be established that, absent the order, the petitioner faces a risk of irrecoverable loss.

Under Article 40.11.6, where a person possessing, managing, or storing the data fails to comply with a preservation order, the court may deem the petitioning party's assertions as to the facts sought to be proved to be true. Beyond this evidentiary consequence, a person who willfully destroys data or renders it unusable in violation of a preservation order is subject to imprisonment of up to seven years or a fine of up to one hundred million won. The gradation is notable, since obstruction of an expert investigation attracts an administrative fine, whereas

destruction of preserved data attracts criminal liability.

### **3. Counsel-Led Party Examination (Article 40.12)**

Article 40.12 provides for attorney-led mutual examination. Where both parties are represented by counsel, the court may upon the parties’ petition determine that persons necessary for the verification of facts or materials shall be examined, with the examination conducted through reciprocal questioning led by counsel for each side. Article 40.12.2. permits the court to set a deadline for completing the examination before the first pleading date, which is the provision that most directly corrects the structural defect of ordinary party examination. The procedure draws on deposition practice in United States civil litigation, although it remains subject to judicial authorization and to statutory limits on the number of deponents and on the scope, method, and location of examination.

Statements made in the course of the examination are recorded by audio or video means under Article 40.12.3. Where a statement includes communications protected under the newly codified attorney-client privilege, a party may seek the deletion of that portion of the record under Article 40.12.9.

### **4. The Revised Attorney-at-Law Act as a Means of Defense (Article 40.7)**

On the very same day the National Assembly passed the amendment to the Cooperation Act, it also passed an ammendment to the Attorney-at-Law Act that explicitly introduced the Attorney-Client Privilege (ACP). Article 26-2 of the Attorney-at-Law Act recognizes for the first time in Korean law a right to withhold confidential communications between an attorney and a client, or a prospective client. The privilege provisions themselves commence on February 19, 2027, one year in advance of the investigation provisions, and apply to communications and materials generated before commencement.

In line with this reform, Article 40.7 of the amended Cooperation Act

dictates that where the court decides to order an expert fact-finding investigation under Article 40.6, it must, upon the petition of a party, exclude communications protected under Article 26-2 of the Attorney-at-Law Act from the subject matter and scope of the investigation. This provision serves as a powerful shield against overbroad inquiries that touch on sensitive corporate information.

#### **IV. Analysis and Implications**

The practical consequences of the amendment are best understood as a redistribution of bargaining power within a bilateral relationship whose defining characteristic has been informational asymmetry. The prior regime allocated to the principal contractor both the technical data in dispute and the evidentiary record capable of establishing what was done with it. That allocation operated as a durable structural advantage, rendering litigation irrational even when the subcontractor suffered from considerable breaches. By granting subcontractors significantly broader access to the principal contractor's internal core records and personnel, the amendment dramatically lowers the evidentiary threshold for proving technological misappropriation, thereby creating a viable structural incentive for aggrieved subcontractors to seek damages through litigation.

A second implication concerns the newly codified attorney-client privilege. Article 40.7 provides the primary mechanism by which a company subject to investigation may withhold sensitive material. The practical utility of this mechanism depends on whether the enterprise has, in advance, constructed a system capable of invoking it in a manner a court will credit. Communications seeking or conveying legal advice should be routed through a dedicated channel, such as a separate privileged correspondence address or a clearly labelled subject-line convention, so that they can be readily distinguished from ordinary commercial correspondence at the point of creation rather than reconstructed after the fact. In-house counsel should function as a gatekeeper for any document prepared in

anticipation of investigation or litigation, ensuring that materials combining legal analysis with business content are drafted, reviewed, or at minimum co-authored by counsel rather than passed through counsel only for cosmetic labelling. Employees should receive periodic training on which categories of communication qualify for protection, since a workforce that copies counsel indiscriminately on unrelated business matters undermines the credibility of any later privilege claim. Finally, the enterprise should maintain a contemporaneous privilege log identifying the date, participants, and general subject matter of protected communications as they are created, rather than compiling one retrospectively once an investigation has commenced, as a means to counter the objection that the underlying designation was pretextual.

The data preservation order also carries significant consequences. Because the order may be issued where litigation is merely ‘reasonably anticipated’ rather than commenced, the relevant obligation is defined by the company’s own assessment of risk. The criminal sanction attached to wilful destruction gives this obligation an unusual severity by comparative standards and renders routine document destruction policies newly hazardous where a dispute is foreseeable. Hence, corporate compliance frameworks must establish objective criteria for identifying when a legal dispute becomes “reasonably anticipated,” automatically triggering a comprehensive suspension of routine spoliation or automatic-deletion routines. Crucially, companies must implement verifiable litigation hold procedures overseen by legal counsel, ensure clear internal escalation channels when commercial friction arises, and maintain immutable audit trails to demonstrate good-faith compliance in the event that an investigation ensues.

## **V. Conclusion**

The 2026 amendment to the Cooperation Act is modest in formal scope, extending only to actions for damages arising from the misappropriation of technology data

between principal enterprises and their small and medium-sized subcontractors. Its significance for Korean civil procedure is nonetheless substantial. It establishes for the first time that a Korean court may authorize a party-nominated expert to enter a company's premises, question its personnel, and copy its records before the substantive proceedings have been fully argued. It also attaches adverse evidentiary consequences and administrative fines to obstruction, while reserving an evidentiary and criminal sanction stronger than any previously available. Together with the codification of attorney-client privilege, the reform addresses a deficiency that Korean scholarship has documented for decades, namely the absence of a regulatory framework governing the parties' own collection of evidence.

- 
- 1 Cha Sanghoon, *Breaking Down the Evidentiary Barrier to Proving Technology Misappropriation ... First Cross-Ministerial Introduction of a Korean-Style Discovery System*, Ministry of SMEs and Startups, 29 January 2026, (trans. by writer), <https://www.mss.go.kr/site/smba/ex/bbs/View.do?cbIdx=86&bcIdx=1065156&parentSeq=1065156> (last visited August 1, 2026).
  - 2 Kim Jabonn, *Key Issues in the Debate on Introducing a "Korean-Style" Discovery System and Policy Alternatives: Correcting Misconceptions about the U.S. and German Evidence-Disclosure Regimes*, Korean Journal of Banking and Financial Law, Vol. 18 Issue 4, 115, 151 (2025).
  - 3 Yoon Jaepil, *Is a Document Production Order Truly Mandatory?*, Law Times, 1 June 2024, (trans. by writer), <https://www.lawtimes.co.kr/news/articleView.html?idxno=198675> (last visited August 1, 2026).
  - 4 Choi Kwang Sun, *A Study on the Problems and Improvement for Current System of Order to Produce Documents in the Civil Procedure Act*, Sogang Journal of Law and Business, Vol. 7 Issue 2, 153, 155 (2017).
  - 5 Jo Sohyun, *The "Discovery" System Brought to Light by the Coupang Incident*, Etoday, 24 December 2024, (trans. by writer), <https://www.etoday>.

co.kr/news/view/2539192 (last visited August 1, 2026).

- 6 Kim Dae Eun, *Reducing the Burden of Proof on Enterprises Harmed by Technology Misappropriation*, Korea Industry Daily, 1 January 2026, (trans. by writer), <https://kidd.co.kr/news/244827> (last visited August 1, 2026).

## References

- Cha Sanghoon, *Breaking Down the Evidentiary Barrier to Proving Technology Misappropriation...First Cross-Ministerial Introduction of a Korean-Style Discovery System*, Ministry of SMEs and Startups, 29 January 2026, (trans. by writer), <https://www.mss.go.kr/site/smba/ex/bbs/View.do?cbIdx=86&bcIdx=1065156&parentSeq=1065156> (last visited August 1, 2026).
- Choi Kwang Sun, *A Study on the Problems and Improvement for Current System of Order to Produce Documents in the Civil Procedure Act*, Sogang Journal of Law and Business, Vol. 7, Issue 2 (2017).
- Jo Sohyun, *The “Discovery” System Brought to Light by the Coupang Incident*, Etoday, 24 December 2024, (trans. by writer), <https://www.etoday.co.kr/news/view/2539192> (last visited August 1, 2026).
- Kim Dae Eun, *Reducing the Burden of Proof on Enterprises Harmed by Technology Misappropriation*, Korea Industry Daily, 1 January 2026 (trans. by writer), <https://kidd.co.kr/news/244827> (last visited August 1, 2026).
- Kim Jabonn, *Key Issues in the Debate on Introducing a “Korean-Style” Discovery System and Policy Alternatives: Correcting Misconceptions about the U.S. and German Evidence-Disclosure Regimes*, Korean Journal of Banking and Financial Law, Vol. 18 Issue 4 (2025).
- Yoon Jaepil, *Is a Document Production Order Truly Mandatory?*, Law Times, 1 June 2024, (trans. by writer), <https://www.lawtimes.co.kr/news/articleView.html?idxno=198675> (last visited August 1, 2026).



## The Family-Member Exemption for Evidence Tampering under Korean Criminal Law

Seoha Jung\*

### Abstract

This article examines the family-member exemption in Article 155.4 of the Korean Criminal Act and evaluates how its humane purpose can be preserved without allowing family status to shield serious obstruction of justice. Drawing on a recent Gwangju murder investigation as background, it distinguishes evidence tampering, assistance in avoiding proceedings, and interference with investigative procedures. The article argues that interpretation and reform must be separated. Under current law, courts should focus on whether the act was committed for the offender's benefit and whether the conduct independently constitutes another offense involving misuse of public authority or confidential information. Participation with nonrelatives, digital evidence, and the seriousness of the underlying offense should not become unwritten exclusions from the exemption. Where complete exemption appears excessively, legislation should permit discretionary remission guided by the actor's role, the significance of the evidence, and the degree of interference with proceedings.

**Keywords** *family-member exemption, evidence tampering, family protection in criminal law, obstruction of investigation and official misconduct*

---

\* Ewha Law School. e-mail: 215a218ash@ewha.ac.kr

## **I. Introduction**

On May 5, 2026, the killing of a 16-year-old high school student in Gwangju raised questions about evidence preservation, forensic materials, and alleged investigative misconduct in light of the suspect's familial relationship with his father, an active-duty police officer.<sup>1</sup> Although these allegations remain unverified, the case highlights a recurring concern: a familial relationship that may ordinarily provide grounds for excusing certain conduct may, in the investigative context, also facilitate conduct that threatens the integrity of an investigation or subsequent trial.

Article 155.4 protects certain relatives and cohabiting family members who act for an offender's benefit. The issue is how the provision should operate when assistance also benefits an unrelated person, is organized through another actor, concerns evidence affecting several persons or proceedings, or is connected with investigative authority. These situations are legally distinct: they implicate the statutory purpose requirement, accomplice liability, or offenses independently protecting public duties.

This argument proceeds in two stages. Under current law, Article 155.4 should be applied according to its text and the distinct interest protected by each offense. Courts should not create exclusions merely because conduct appears serious. If the exemption remains overinclusive in difficult cases, correction should come through legislation permitting discretionary remission rather than judicially invented exceptions. Comparative analysis of Germany, Japan, and the United States illustrates the different ways in which legal systems may recognize family relationships in this context.

## **II. Forms of Family Involvement and the Structure of the Inquiry**

### **1. Forms of Involvement**

Family involvement in obstructing justice may take three forms. A relative may destroy, conceal, fabricate, or alter evidence; help a suspect evade detection or proceedings; or, where family ties overlap with investigative authority, disclose confidential information or interfere with evidence-related procedures. Depending on the conduct, the third category may give rise to liability under Articles 155, 151, and 127 of the Korean Criminal Act. Evidence tampering concerns proof relating to another person's case. Assistance in avoiding proceedings concerns escape from apprehension or punishment. Misuse of investigative authority adds a breach of institutional duty. Treating every form of assistance as a single immunity question would obscure the elements of the underlying offenses and the limited function of Article 155.4.

## **2. Questions of Interpretation and Reform**

Four questions structure the analysis that follows. First, does the exemption survive when the actor intends to benefit both the offender and an unrelated third party? Second, does a relative who acts with or through a nonrelative remain protected, and does instigation differ from direct assistance? Third, may a public official rely on family protection when the conduct also violates a duty attached to office or confidential information? Fourth, how does digital evidence create further difficulty when one act affects several persons or proceedings? The inquiry should be sequential: identify the charged offense, its protected interest, and the actor's purpose; determine whether Article 155.4 applies; then consider whether reform is warranted. Keeping these steps analytically distinct is important because conduct that may appear equally troubling in practical terms can raise fundamentally different legal questions depending on the offense charged and the basis of liability. The seriousness of the conduct, standing alone, cannot substitute for this analysis.

### **III. Korean Law**

#### **1. Evidence Tampering under Article 155.1**

Article 155.1 punishes the destruction, concealment, fabrication, or alteration of evidence relating to another person's criminal or disciplinary case. The case need not be under formal investigation; it suffices that the matter may later become the subject of criminal proceedings. Liability is unaffected by a subsequent non-prosecution decision or acquittal. Evidence broadly includes any material relevant to the State's punitive or disciplinary authority, regardless of its probative value or whether it favors the accused. A disciplinary case is limited to disciplinary proceedings conducted by the State. Actual obstruction of an investigation or trial is unnecessary (Daebeobwon [S. Ct.], Jan. 15, 2026, 2024Do15728 (S. Kor.); Daebeobwon [S. Ct.], Nov. 30, 2007, 2007Do4191 (S. Kor.)). The provision generally does not extend to destruction of evidence in one's own case, even when the same act affects proceedings against an accomplice (Daebeobwon [S. Ct.], Jan. 15, 2026, 2024Do15728 (S. Kor.)). Article 155 is thus structured around evidence relating to another person, and the exemption should be analyzed only after the conduct falls within the underlying offense.

#### **2. The Scope of Article 155.4**

Article 155.4 exempts a relative or cohabiting family member who acts for the offender's benefit. Under Article 777 of the Civil Act, relatives include a spouse, blood relatives within the eighth degree, and relatives by marriage within the fourth degree; a de facto spouse is excluded (Criminal Act, art. 155.4; Civil Act, art. 777; Daebeobwon [S. Ct.], Dec. 12, 2003, 2003Do4533 (S. Kor.)). The exemption does not apply when the actor also intended to benefit an unrelated third party (Seoul Nambu Jibangbeobwon [Seoul Dist. Ct.], Jun. 15, 2018, 2016Gojeong708 (S. Kor.)). The decisive factor is therefore the presence of an additional unprotected

purpose, rather than the mere fact that the conduct causes broader harm. This distinction matters because the scope of Article 155.4 should turn on the statutory requirement concerning the actor's purpose, not simply on whether the surrounding circumstances make the conduct appear more serious. Courts should accordingly be cautious about transforming every aggravating circumstance into a new limit on the exemption. Non-relative participation likewise calls for caution. Joint conduct may reveal an additional purpose, a directing role, or an organized plan, but participation alone proves none of these. Rather than relying on automatic exclusion, courts should evaluate each relative's purpose and contribution on an individual basis. Disqualifying all joint conduct outright would introduce a restriction not explicitly present in Article 155.4; while such an approach could be pursued as a future reform, it cannot be justified as a requirement of the existing law.

### **3. Instigation and Independent Official Offenses**

A person ordinarily commits no offense by requesting a relative's assistance in destroying evidence relating to his or her own case. Liability may arise when the request exceeds the legitimate exercise of the right of defense. Courts examine the conduct, the relationship between the parties, the surrounding circumstances, and the risk posed to criminal justice. A relative who personally conceals evidence may be protected under Article 155.4, while one who directs another person to destroy evidence may remain liable as an instigator (Seoul Godeungbeobwon [Seoul High Ct.], Mar. 26, 2021, 2020No1878 (S. Kor.); Seoul Joongang Jibangbeobwon [Seoul Dist. Ct.], Jan. 19, 2017, 2016Godan4787 (S. Kor.)). Family pressure alone cannot justify arranging evidence destruction through another person. Misuse of investigative authority presents a separate issue. If a police officer discloses confidential information or interferes with official procedures, the wrongfulness may arise from breach of public duty independent of any assistance to a relative. Article 155.4 should not absorb liability for that offense. This conclusion is not

a judicially created exception for public officials; it follows from identifying the offense and legal interest that each provision protects. Protection concerning one offense does not erase liability for another with a distinct institutional basis. The family relationship remains relevant to the offense covered by Article 155.4, but it does not alter the elements or protected interest of a separate offense arising from the actor's official position.

## **IV. Comparative Analysis**

### **1. Germany and Japan**

German law does not provide a family-member exception to evidence-related offenses in the same form as Article 155.4 of the Korean Criminal Act. Instead, German law considers family relationships primarily under section 258 of the German Criminal Code. Section 258.1 punishes intentionally or knowingly preventing another person from receiving punishment or a measure, while section 258.6 exempts conduct benefiting a relative. The exemption does not extend to separate offenses such as suppression of documents under section 274. Section 258a applies when an official assigned to criminal proceedings or enforcement obstructs punishment or enforcement, and section 258.6 does not apply. A police officer who uses official authority to assist a relative therefore cannot invoke the protection available to an ordinary family member. The German approach separates private family assistance from misconduct grounded in public authority.

Japanese law is closer to Korean law. Article 104 of the Japanese Penal Code punishes destruction, forgery, or alteration of evidence relating to another person's criminal case and the use of forged or altered evidence. Under Article 105, punishment may be remitted when a relative of an offender or escaped person commits an offense under Article 103 or 104 for that person's benefit. The protection is discretionary and limited to those offenses. Japan accordingly

recognizes family pressure without requiring complete exemption in every qualifying case.

## **2. The United States: No General Family-Member Exemption under Federal Law**

Title 18 of the United States Code, particularly sections 3, 1071, 1512, and 1519, contains no general family-member exemption. A person who assists an offender with the required knowledge and intent may be liable as an accessory after the fact. Liability may also arise from harboring or from destruction, concealment, or falsification intended to affect proceedings or investigations. Family status alone does not itself excuse the conduct. Marital relationships are protected instead through evidentiary privileges. The privilege against adverse spousal testimony belongs to the witness-spouse, while the marital-communications privilege protects confidential exchanges made during marriage.<sup>2</sup> In *Trammel v. United States*, the Supreme Court held that a defendant cannot prevent a willing spouse from testifying. These privileges regulate testimony and confidential communications, not substantive liability for evidence destruction or assistance. The distinction is significant for present purposes: U.S. federal law recognizes certain interests arising from marriage, but it generally does so without converting the marital relationship into a substantive defense to obstruction-related conduct. The United States approach shows that family protection need not take the form of immunity from obstruction-related offenses.

## **3. Comparative Implications**

Each system protects family relationships differently. German law grants a limited substantive exemption but separates official obstruction and other offenses. Japanese law makes the consequence of family status discretionary. United States federal law protects marital interests principally through evidence law. Together,

these approaches show that family status need not carry the same effect across different conduct, offenses, or institutional interests.

For Korean law, these comparisons reinforce the importance of separating the interpretation of the existing exemption from the question of whether its consequences should be modified through legislation. Courts should first enforce the requirement that conduct be for the offender's benefit and should assess separate official offenses independently. Joint participation, digital evidence, and the gravity of the underlying offense should not become unwritten exclusions. Under current law, those circumstances may inform the factual assessment of purpose or the analysis of separate offenses, but they should not by themselves render Article 155.4 inapplicable. The second stage concerns legislation. Complete immunity may appear excessively where a relative directs others, participates in organized conduct, destroys evidence important to several persons or proceedings, or substantially interferes with investigation or trial. Yet automatic liability would disregard the family pressure underlying the provision. A discretionary-remission model could preserve that recognition while allowing courts to consider the actor's role, the importance and scope of the evidence, use of official access, and practical effect on proceedings.

Two points require separate answers. First, the seriousness of the underlying offense should not itself defeat protection, because serious accusations may intensify pressure on a relative. Second, digital evidence should not receive a categorical rule, because its form does not determine purpose. Its significance lies in the possibility that one act may affect evidence concerning several persons or cases. That feature may increase the practical consequences of the conduct, but it does not by itself answer the separate question whether the relative acted for the offender's benefit within the meaning of Article 155.4. Both considerations belong within guided discretion rather than an expanded judicial definition of Article 155.4.

## V. Conclusion

Article 155.4 reflects a defensible judgment that criminal law should recognize the conflict experienced by relatives who assist an offender. Its current limits should derive from the statutory purpose requirement and the independent operation of other offenses. Conduct intended to benefit an unrelated third party may fall outside the provision, and misuse of official authority may generate separate liability. Joint action, digital evidence, and the seriousness of the underlying offense should not automatically defeat the exemption. If those circumstances make complete immunity disproportionate, the solution should be legislative rather than interpretive. Discretionary remission would preserve the humane basis of family protection while allowing courts to respond in a transparent, consistent manner to the actor's role and the independent seriousness of obstruction. It would also maintain a clear boundary between applying Article 155.4 as enacted and deciding whether its categorical effect should be revised. Preserving that distinction would allow courts to apply the existing provision without creating exceptions that its text does not expressly provide, while leaving broader policy adjustments to the legislature.

- 
- 1 Jeong Hoe-seong, *Jang Yun-gi Admits Sexual Crime Intent Two Months After Killing a High School Girl*, Yonhap News Agency (July 13, 2026), (trans. by writer), <https://www.yna.co.kr/view/AKR20260713051452054> (last visited August 2, 2026).
  - 2 Michael W. Mullane, *Trammel v. United States: Bad History, Bad Policy, and Bad Law*, Maine Law Review, Vol. 47 Issue 1, 106, 121 (1995).

## References

Jeong Hoe-seong, *Jang Yun-gi Admits Sexual Crime Intent Two Months After*

*Killing a High School Girl*, Yonhap News Agency (July 13, 2026), (trans. by writer), <https://www.yna.co.kr/view/AKR20260713051452054> (last visited August 2, 2026).

Michael W. Mullane, *Trammel v. United States: Bad History, Bad Policy, and Bad Law*, Maine Law Review, Vol. 47 Issue 1 (1995).





# *LEX KOREA*

Ewha Law School English Law Journal



EWHA WOMANS UNIVERSITY  
LAW SCHOOL